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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFRED STEPHEN HOWARD,

Defendant and Appellant.

H033352

(Santa Clara County
Super. Ct. No. EE705877)

On April 19, 2007, defendant was seen walking around Grand View Ranch, a private 25-acre estate outside the city of Saratoga. The estate has clearly posted “no trespassing” signs. When confronted by the estate’s lead gardener, defendant quickly left through the gate and entered a red Dodge pickup truck that was parked on the private road serving the estate. As the gardener crossed the road in front of the truck, the truck’s engine roared and its wheels turned toward him. The truck accelerated and its left front fender hit the gardener, throwing him up into the air. He landed on his back and sustained injuries to his back, head, arms, hands and feet. Defendant did not stop and identify himself. He sped off. The gardener reported the truck’s license plate number to a deputy sheriff, who traced the license to a truck owned by defendant. The deputy went to defendant’s Sunnyvale residence and spoke to him. Defendant told the officer that he

intentionally hit a man with his truck. A two-count felony complaint was filed against defendant on May 11, 2007, based on this incident.

On July 18, 2007, the court appointed a psychotherapist to examine defendant pursuant to Penal Code section 1369. The psychotherapist found defendant to be mentally competent to stand trial. Following a preliminary examination, defendant was charged by information filed October 19, 2007, with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1); count 1), and hit and run resulting in injury (Veh. Code, § 20001, subds. (a) & (b)(1); count 2). The information further alleged that defendant personally used a dangerous and deadly weapon, a vehicle, in the commission of the offense in count 1. Defendant remained out of custody on supervised OR.

On May 14, 2008, defendant's appointed counsel declared a doubt as to defendant's mental competence pursuant to Penal Code section 1368. The court found that, although defendant might be "recalcitrant or uncooperative," there was no showing that he was incompetent. The court continued the matter. On May 16, 2008, the court appointed a psychotherapist to examine defendant at his counsel's request pursuant to Evidence Code section 1017, and to make the result of the examination available to defendant's counsel.

On July 2, 2008, defendant's counsel again declared a doubt as to defendant's mental competence pursuant to Penal Code section 1368. The court appointed a different psychotherapist to examine defendant. (Pen. Code, § 1369, subd. (a).) The psychotherapist submitted a report concluding that defendant was not competent to stand trial. On July 23, 2008, defendant's counsel and the prosecutor submitted the matter on the psychotherapist's report. (Pen. Code, § 1369, subd. (e).) Defendant stated that he objected, and that he wanted the matter dismissed. Overruling defendant's objection, the court found defendant mentally incompetent. (Pen. Code, § 1369, subd. (f).) The court referred defendant for an evaluation and placement recommendation and continued the

matter. The evaluator recommended that defendant be committed to the state Department of Mental Health for placement in a trial competency program.

On August 27, 2008, defendant informed the court that he wanted the charges reinstated and the matter calendared for trial. His counsel stated that the result of the Penal Code section 1368 proceedings was suspension of the criminal proceedings due to a finding that defendant is not competent. The court informed defendant that there was a recommendation that he go to a trial competency program at state hospital until his competency is restored. The court committed defendant to the Department of Mental Health for a maximum term of three years in a trial competency program, and set the matter for review of his status for September 24, 2008. (Pen. Code, § 1370, subd. (a)(1)(B).)

Defendant filed a timely notice of appeal and we appointed counsel to represent him in this court. Appointed counsel has filed a brief that states the case and facts but raises no issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. That period has elapsed and we have received no response from defendant. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal.

The order committing defendant to the Department of Mental Health is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MCADAMS, J.

DUFFY, J.